

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HEINZ BOSS

Appeal No. 2005-1546
Application No. 09/426,023

HEARD: DECEMBER 13, 2005

Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 10, all of the claims pending in the application.

As noted on page 1 of the specification, appellant's invention relates to an apparatus for collecting, stitching and/or cutting printed products. On page 5, it is indicated that the primary object of the invention is to "provide a way for avoiding

vibrations at the collector chain, and to provide optimum prerequisites for addressing the printed products." Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Berger et al. (Berger)	4,768,766	Sept. 6, 1988
Harris, Jr. et al. (Harris)	5,114,128	May 19, 1992
Chang	5,777,443	Jul. 7, 1998

Claims 1 through 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Harris¹.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Harris in view of Chang.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant

¹ The Berger patent noted above is incorporated by reference into the Harris patent. See, e.g., column 7, lines 36-41.

regarding those rejections, we make reference to the examiner's answer (mailed November 24, 2004) for the reasoning in support of the rejections, and to appellant's brief (filed March 3, 2003) and reply brief (filed January 26, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

With respect to the rejection of claims 1 through 10 under 35 U.S.C. § 102(b) based on Harris, while acknowledging that the apparatus of Harris/Berger is of the general type disclosed in the present application and that it includes an endless collector chain (12) and successively arranged feeders (14a-14d) mounted above the collector chain for placing the printed products (16) on the collector chain, a stitching device (30) for stitching the printed products, and a delivery unit (32) for removing printed products at

a conveying end of the collector chain and for supplying the printed products for further processing, appellant argues that Harris/Berger does not include a "drive unit" like that defined in the claims on appeal. More particularly, appellant asserts that Harris does not disclose or teach appellant's claim 1 limitation requiring:

a drive unit comprised of at least one first servo drive and a collector chain drive, connected to the collector chain and configured to control the first servo drive through a signal line in a synchronously timed manner, wherein the first servo drive is configured to drive additional units of the apparatus.

Appellant further asserts that a servo drive is not required for the selective binding production sequence described in Harris/Berger, and is not suggested by the Harris reference.

The examiner's contention (answer, pages 3-4) that the drive unit (20) of Harris is fully responsive to that required in claim 1 on appeal is not understood. Harris merely indicates that the chain (12) is driven by a motor (20) and that a signal representing chain movement is coupled to line control data processor (22) as indicated by line (24) of Figure 1. Note column 7, line 66 through column 8, line 1 of Harris. Nothing in Harris teaches or suggests a drive unit including a first servo drive like that in appellant's

drive unit including a first servo drive like that in appellant's claim 1, or that such a servo drive be controlled in the manner required in the claims before us on appeal. Nor has the examiner clearly pointed to any such servo drive in Harris.

As for the Berger patent which is incorporated into the disclosure of Harris, we find nothing therein which is responsive to the particular drive unit defined in the claims on appeal and note that the examiner has not specifically pointed out where this reference discloses or teaches at least one first servo drive and a collector chain drive, connected to the collector chain and configured to control the first servo drive through a signal line in a synchronously timed manner, wherein the first servo drive is configured to drive additional units of the apparatus. In relying on Berger, it appears the examiner is somehow attempting to read the drive seen in Figure 4 thereof as both the first servo drive and the collector chain drive required in claim 1 on appeal, even though the claims on appeal clearly require two different drives forming the "drive unit" therein and that the collector chain drive be "configured to control the first servo drive through a signal line in a synchronously timed manner," while the first servo drive is configured to drive additional units of the apparatus.

In light of the foregoing, we conclude that the examiner has not made out a *prima facie* case of anticipation. Thus, we will not sustain the examiner's rejection of claims 1 through 10 under 35 U.S.C. § 102(b) as being anticipated by Harris.

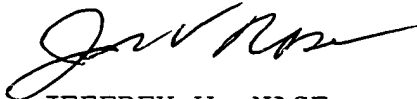
Concerning the examiner's rejection of dependent claim 4 under 35 U.S.C. § 103(a) based on Harris and Chang, we have additionally reviewed the Chang patent, but find nothing therein which makes up for or otherwise provides response for the deficiencies of Harris noted above. Accordingly, we refuse to sustain the examiner's rejection of claim 4 under 35 U.S.C. § 103(a).

In summary, we have decided not to sustain the examiner's rejection of claims 1 through 10 under 35 U.S.C. § 102(b) based on Harris or that of claim 4 under 35 U.S.C. § 103(a) based on Harris and Chang. Thus, the decision of the examiner to reject claims 1 through 10 of the present application is reversed.

REVERSED



CHARLES E. FRANKFORT
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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